

Two of the bits are column 4 lines 34, 35 and column 4 lines 39-52. The two cited bits are properly placed in context by viewing column 4, lines 25-52. In column 4, lines 25-38, one of cited bits is underlined. Column 4, lines 25-38 is given as follows:

The dealer...places one card face down in the area on the layout marked 4 and deals each player one card face down. The dealer then places a second card face-down in the area marked 3 and deals the players a second card face-down and concludes the round by placing a third card face-up in the area marked 2. The three cards in the areas 2, 3 & 4 are community cards and complete each players' five card hand...Each player has the option of discarding their first or second card, or both, face down. Players may at this stage, either 'stand' by making no further bets or 'raise' by wagering on Bet Two...When all wagers have been placed on Bet Two the fourth card is revealed by the dealer. Players may again either stand at this stage or raise by wagering on Bet Three.

Although column 4, lines 25-38 does not state that discarded cards are replaced, replacement of the discarded cards is called for in fig. 2 of de Keller.

Claim 1 clearly states that the player has an opportunity to bet on "a rank of a Poker hand formed from dealt cards" and an opportunity to "make a wager on a rank of a Poker hand formed from said dealt cards augmented by said community cards" (underlining added). There is nothing in Claim 1 remotely suggesting that the player may either discard and replace cards or that the player has an opportunity to make multiple raises as called for in the above-cited portion of de Keller.

Column 4, lines 39-52 state that the number of community cards and the number of dealt cards can be varied in the above-quoted column 4 lines 25-38 of de Keller.

A third bit of de Keller that is cited is column 5, lines 8,9 which states that "[t]he game is operable despite the addition or omission of specific wagers." The third bit is vague and indefinite. A reason for the citation of the third bit is unclear.

Applicant's claim 1 includes a step of "settling said wagers." There is nothing in the cited bits about settling wagers.

For reasons given hereinbefore, claim 1 is allowable over de Keller whereby allowance thereof is hereby requested.

REJECTION OF CLAIMS 2-13

Claims 2-13 are rejected under 35 USC § 103 as obvious over de Keller in view of pokerproducts.com's description of a type of Poker game called 357. The office action alleges that "357 discloses having a Poker game that initially starts out with three card and discloses a player wagering on a three card wager, a five card wager and a seven card wager and makes a payout to a player based on the rank of the hand." What is actually disclosed is the following:

"...first you deal three cards to every

player. Threes are wild with these three cards. Best hand wins. Best hand being 3 aces. Each player decides if they want to participate or not. The players that participate then show each other their cards. The loser matches the pot [what pot?]. The non-participants annie up and the dealer then deals two more cards with fives being wild this time. The losers match the pot and the non-participants annie up and two more cards are dealt with sevens being wild."

There is no clear explanation in 357 of how a pot comes into existence either before or immediately after "you first deal three cards to every player." Additionally, there is no description of an event upon which the non-participants are wagering when they "annie up". There is no description of when any participant or non-participant ever receives a payout. Apparent defects in the disclosure of 357 should foreclose combining 357 with either de Keller or any other reference.

Claim 2 depends from claim 1. In claim 2, the player is given an option of making a three card Poker wager, a five card Poker wager and a seven card Poker wager.

Claim 8 depends from claim 1. In claim 8 the player is given an option of making a five card wager and a seven card wager based upon a hand that includes five dealt cards and two community cards.

Unlike 357, in claims 2 and 8 there are no wagers by non-participants and there are no ante wagers and no wagers based upon a size of a pot during a course of play. Therefore, claims

2 and 8 are allowable over the ground of rejection.

Claim 3 and claim 9 relate to settling wagers by making payouts. The office action alleges that "...357 discloses having a poker game that...makes a payout." The allegation that 357 discloses making a payout is untrue. Therefore, claims 3 and 9 are allowable over the ground of rejection.

Claim 11 calls for "permitting said player to rescind said seven card wager upon forfeiture of a portion of said seven card stud wager." Neither de Keller nor 357 contemplate rescinding a wager. In 357 a player may decide to become a non-participant and be faced with an obligation to "annie up". Therefore, claim 11 is allowable over the ground of rejection.

Furthermore, In re Dembiczak, 175 F. 3d 994, 50 USPQ2nd 1614 (Fed. Cir., 04/28/1999) is now controlling law on combining of references. According to Dembiczak, an express factual reference needs to exist in the record pointing to the suggestion of the combination of references in the prior art that is cited for the conclusion of obviousness. Quoting directly from

Dembiczak:

"Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight based obviousness analysis is rigorous application of the requirement of a showing of the teaching or motivation to combine prior art references. [Citations] ..
Combining prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability - the essence of hindsight. [Citations]..."

and

"In addition to demonstrating the propriety of an obviousness analysis, **particular factual findings regarding the suggestion, teaching or motivation to combine serve a number of important purposes, including: (1) clear explanation of the position adopted by the Examiner...; (2) identification of the factual disputes, if any and (3) facilitation of review on appeal.**"

Corresponding to Dembiczak, MPEP 706.02(j) includes the following:

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success...The teaching or suggestion to make the claimed combination ... must be found in the prior art and not based on applicant's disclosure."

It is respectfully submitted that the office action has not shown that, absent applicant's disclosure, there is either a suggestion, teaching or motivation for any combination of de Keller and 357. Because of the defects in the 357 disclosure and because there is neither a suggestion, teaching or motivation for any combination of de Keller and 357, claims 2-13 are allowable

over the ground of rejection.

For reasons given hereinbefore and because claims 2-13 depend either directly or indirectly from claim 1 which has been shown to be allowable, claims 2-13 are allowable whereby allowance thereof is hereby requested.

REJECTION OF CLAIMS 14-16

Claims 14-16 are rejected under 35 USC § 103 as being obvious over de Keller in view of 357. Claim 14 includes the steps of "dealing out three community cards face down;" and "turning said community cards face up, a three card stud Poker hand being formed from said community cards...". There is nothing in de Keller or 357 that suggests making a three card hand from community cards.

Claim 14 additionally calls for "making a three card payout to said player based upon the rank of said three card hand". The office action alleges that 357 discloses "paying out based upon a three card hand." Unlike claim 14 wagering in 357 calls for losers to match the pot and non-participants to "annie up". Matching the pot is the exact opposite of "paying out based upon a three card hand". Additionally, as stated hereinbefore, the allegation that 357 discloses making a payout is untrue. Therefore, claim 14 is allowable over the ground of rejection.

Since claim 14 has been shown to be allowable and claims 15

and 16 depend from claim 14, they are also allowable whereby allowance of claims 14-16 is hereby requested.

REJECTION OF CLAIMS 17 AND 18

The office action states that claims 17, 18 correspond to a "method set forth for use of the structure listed in claims 1-16" Since claims 1-16 have been shown to be allowable, claims 17, 18 are allowable. Allowance of claims 17, 18 is hereby requested

REJECTION OF CLAIMS 18 AND 19

Claims 19, 20 are rejected under 35 USC § 103 as being unpatentable over Weingardt in view of Jones. Weingardt discloses a game where a player decides to either play five card draw Poker, six card draw Poker or seven card draw Poker.

Jones discloses an underlying five card draw Poker game that is augmented by one or two jackpot components. A separate wager is required to participate in either one or both of the jackpot components. A jackpot payout is based upon the rank of a final five card draw Poker hand.

Claim 19 combines five card draw Poker with seven card stud Poker. According to claim 19, a five card draw Poker hand and a seven card stud Poker hand are produced. In further accord with claim 19, the five card draw Poker hand and the seven card stud Poker hand are the subject matter of a five card payout and a

seven card payout, respectively.

In draw Poker, cards are discarded and replaced. In stud Poker, cards are neither discarded nor replaced. Therefore, draw Poker and stud Poker are vastly different from each other.

There is no mention of stud Poker in either Weingardt or Jones. The combination of Weingardt and Jones does not suggest a game that combines five card draw Poker with seven card Stud poker and calls for the five card payout and the seven card payout. Since neither Weingardt nor Jones even mention stud Poker, any combination of Weingardt and Jones is vastly different from claim 19. For reasons given hereinbefore, claim 19 is allowable over the ground of rejection.

Claim 20 depends from claim 19 which has been shown to be allowable whereby claim 20 is allowable.

Since claims 1-20 have been shown to be allowable, reconsideration of claims 1-20 and an early allowance thereof are hereby requested.

Respectfully submitted,



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